

No.

6447

United States
Circuit Court of Appeals
For the Ninth Circuit.

GWYNETH HELBUSH,

Appellant,

vs.

HERMAN H. HELBUSH,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

FILED

APR 29 1931

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature. errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

GEO. CLARK, Esq.,

Pacific Mutual Building, Los Angeles, California.

HARRY I. STAFFORD, Esq.,

Flood Building, San Francisco, California.

For Appellee:

SULLIVAN, ROCHE, JOHNSON & BARRY,

Esqs.,

Humboldt Bank Building, San Francisco, California.

UNITED STATES OF AMERICA SS:

To HERMAN H. HELBUSH, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 30th day of April, A. D. 1931, pursuant to an order allowing appeal filed on March 24, 1931 in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause in equity entitled GWYNETH HELBUSH, Plaintiff, vs. HERMAN H. HELBUSH, Defendant, No. S-40-C, Central Division, wherein GWYNETH HELBUSH is the Appellant, and you are the Appellee, to show cause, if any there be, why the order and judgment in the said order allowing appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Geo. Cosgrave United States District Judge for the Southern District of California, this 1st day of April, A. D. 1931, and of the Independence of the United States, the one hundred and fifty-fifth.

Geo. Cosgrave

U. S. District Judge for the Southern District
of California.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit Gwyneth Helbush, Plaintiff and Appellant, vs. Herman H. Helbush, Defendant and Appellee. Citation Receipt of a copy of the within citation together with copies of petition for appeal, assignment of errors, order allowing appeal, bond on appeal, and praecipe for transcript of record is hereby admitted this 3rd day of April, 1931. Sullivan, Roche, Johnson & Barry Attys for Appellee, H. H. Helbush Filed Apr 8—1931 R. S. Zimmerman, Clerk

IN THE CENTRAL DIVISION OF THE UNITED
STATES DISTRICT COURT IN AND FOR
THE SOUTHERN DISTRICT OF
CALIFORNIA

GWYNETH HELBUSH,
Plaintiff,

vs.

HERMAN H. HELBUSH,
Defendant.

In Equity
No. S-40-C

BILL OF COMPLAINT IN EQUITY TO SET ASIDE
VOID JUDGMENT AND FOR INJUNCTION.

TO THE HONORABLE, THE JUDGES OF THE
CENTRAL DIVISION OF THE UNITED
STATES DISTRICT COURT, IN AND FOR
THE SOUTHERN DISTRICT OF CALIFOR-
NIA:

In the above entitled cause the plaintiff, GWYNETH HELBUSH, a citizen of the United States and a resident of the City and County of San Francisco in the Northern District of California, brings this, her bill of complaint in equity against the defendant, HERMAN HELBUSH, also a citizen of the United States and a resident and inhabitant of the City of Los Angeles, County of Los Angeles, in the Central Division of the Southern District of California, and complaining of the said defendant, alleges:

I

1. That the ground upon which the jurisdiction of said court depends herein, is that specified in subdivision a of section 24 of the Judicial Code, to-wit: a civil suit in equity

where the matter in controversy exceeds, exclusive of interest and costs, the value of Three thousand Dollars (\$3,000.00) and arises under the Constitution of the United States.

2. That for the matters herein complained of the plaintiff has no adequate remedy at law.

II

1. That heretofore, to-wit: on the 9th day of March, 1923, the plaintiff and defendant intermarried in the said City of Los Angeles, State of California, and ever since have been, and now are, husband and wife, unless the final decree of divorce hereinafter alleged is valid and not void. That for the reasons specially averred herein, the said decree is void for want of jurisdiction in the court which rendered and entered it. That on the 14th day of January, 1924, the said defendant wilfully deserted the plaintiff by voluntary separation from her with the intent then and there to desert her. That there is community property real and personal of said parties, in the possession and control of the defendant, situated in said Central Division of the Southern District of California, a more particular description of which property the plaintiff is unable to give without an accounting and discovery of the same herein. That said community property is of a value exceeding Five hundred thousand Dollars (\$500,000.00). That the defendant conceals said property from plaintiff and claims the same adversely to her as being his own separate property and asserts that he is the owner thereof in fee simple absolute. The said claim of the defendant is without right and constitutes a cloud on plaintiff's interest therein as community property. That plain-

tiff's said interest in said property is of a value exceeding Two hundred and fifty thousand Dollars (\$250,000.00).

2. That the matter in controversy herein exceeds, exclusive of interest and costs, the value of Three thousand Dollars (\$3,000.00) and arises under the Constitution of the United States, to-wit: Section one of the Fourteenth Amendment of said Constitution, in respect of the requirement therein for due process of law.

3. That in an action then pending in the Superior Court of the State of California, in and for the City and County of San Francisco, wherein the said GWYNETH HELBUSH was plaintiff and the said HERMAN HELBUSH was defendant, the said Superior Court by its interlocutory decree made and entered in said action on the 27th day of June, 1924, ordered, adjudged and decreed under the provisions of section one hundred and thirty-one of the Civil Code of the State of California, that said plaintiff is entitled to a divorce from said defendant on the ground of his extreme cruelty by him theretofore inflicted upon her. That thereafter, and in the month of August, 1924, plaintiff condoned said offense of extreme cruelty in said interlocutory decree specified, by returning to live with said defendant as his said wife and by resuming matrimonial cohabitation and matrimonial relations with him. That said cohabitation thereupon continued until the 3rd day of January, 1929, when defendant again wilfully deserted plaintiff by his voluntary separation from her with the intent then and there to desert her, and they ever since have been, and now are living separate and apart from each other, but without the consent and against the will of plaintiff.

4. That on the 10th day of April, 1929, the said defendant obtained ex parte and without the knowledge or consent of plaintiff and without notice to her and without affording her an opportunity to be heard against it, a final decree of divorce in said action from said Superior Court. That said ex parte decree of divorce was made by said Superior Court on the 10th day of April, 1929, and entered therein the next day. That in making and entering the said decree of divorce the said Superior Court did so solely on the basis of said interlocutory decree it had previously granted the plaintiff and not upon any pleading by defendant and only on his ex parte motion, without any notice to plaintiff and without affording her a hearing nor an opportunity to be heard. That said Superior Court thereby exceeded its jurisdiction and also acted in excess of its jurisdiction in that said condonation barred said decree of divorce and section one hundred and eleven of the Civil Code of California, because of said condonation, prohibited the said decree of divorce and deprived said Superior Court of jurisdiction to grant the same.

5. That thereafter, to-wit: on the 7th day of May, 1929, the said Superior Court denied the motion of plaintiff to vacate and set aside said decree of divorce for want of jurisdiction to grant said decree, and thereafter, and on the same day, the plaintiff appealed from the said order denying the motion, to the Supreme Court of said State. That on the 15th day of July, 1930, the said Supreme Court determined said appeal by affirming the said order denying said motion and did so on the sole and irrelevant ground that plaintiff did not come into a court of equity with clean hands sufficiently to move the conscience of a chancellor in favor of her said motion to vacate said final

decree of divorce. That thereafter, and on the 11th day of August, 1930, the said Supreme Court denied the petition of plaintiff for a rehearing. That said matters relating to said appeal and its determination by said Supreme Court are alleged herein solely for the purpose of showing the absence of laches in the filing by plaintiff of this bill of complaint.

6. That said condonation by plaintiff of said offense of extreme cruelty specified in said interlocutory decree was not disputed by said defendant on said appeal, nor adjudged invalid or non-existent by said Superior Court nor by said Supreme Court, nor did the latter court determine that said Superior Court had competent jurisdiction to grant or issue said ex parte final decree of divorce despite said condonation, nor that said decree was not in violation of the "due process of law" clause in the Fourteenth Amendment of the Constitution of the United States, but the said Supreme Court affirmed said order of the Superior Court denying plaintiff's motion to vacate said decree upon the sole ground that plaintiff's motive in making said condonation was a "monetary" one, that thereafter she had been guilty of offenses constituting grounds of divorce and that for these reasons she did not come into a court of equity with clean hands and that therefore her said motion to vacate the said ex parte final decree for want of jurisdiction was rightly denied by said Superior Court and should be and was accordingly affirmed by said Supreme Court solely for said reasons. That said reasons for affirming said order are not pertinent or relevant to the said jurisdictional and constitutional objections urged by plaintiff in support of said motion and said appeal.

That each of said jurisdictional and constitutional objections was urged by plaintiff before said Superior Court on said motion to vacate said ex parte final decree and before the said Supreme Court on said appeal, but each of said courts entirely disregarded and evaded and did not decide the same, but in effect held that said objections were precluded as points in the case by the plaintiff not coming into a court of equity with clean hands and for the reasons hereinbefore averred. That at no time was there pleading or proof or trial before said Superior Court concerning or involving any of said reasons, but merely ex parte and hearsay affidavits were presented by defendant and received by said Superior Court against said motion and over the objection and exception of plaintiff on the hearing of said motion to vacate said decree of divorce. That said action of the Superior Court in determining said motion on said affidavits adversely to plaintiff and said decision of the Supreme Court are in violation of the due process of law clause in the Fourteenth Amendment of the Constitution of the United States, in depriving plaintiff of a trial according to the course of the common law, upon issues presented by pleadings and upon evidence by witnesses subject to examination and cross-examination.

7. That the said Superior Court in denying plaintiff's said motion to vacate said ex parte decree of divorce and the said Supreme Court in affirming the order denying the motion, held that Section 132 of the Civil Code of California sustained said ex parte decree. That said Section 132 as thus construed by said State courts is in violation of the due process of law clause in the Fourteenth Amendment of the Constitution of the United States in depriving plaintiff of her said marital status and of her

said interest in the community property without giving her the right to a hearing or affording her an opportunity to be heard against said decree, on the ground that said Superior Court had no jurisdiction to grant or render or enter the same in that the offense specified in said interlocutory decree had been condoned by plaintiff subsequently to the latter decree and that section one hundred and eleven of the Civil Code of said State of California denied to said Superior Court all authority and power to grant, make or enter said final decree, because of said condonation. That a judgment or decree of a court without jurisdiction to render it is not the due process of law secured to the plaintiff by the Fourteenth Amendment of the Constitution of the United States. That said final decree is also in conflict with said provision of the Constitution by reason of the ex parte nature of said decree and its having been made and entered without giving plaintiff a hearing or an opportunity to be heard in defense of her legal rights.

8. That said ex parte proceedings and the said resulting final decree of divorce were and are without the consent of plaintiff and against her will and operate to prevent and do prevent her from enforcing by process of law her legal rights as the wife of defendant. That said defendant is putting forth said final decree and claiming under the same as being a dissolution of said marriage and as depriving plaintiff of any and all rights in said community property acquired subsequently to said decree, to-wit: property acquired by said parties otherwise than by gift, bequest, devise or descent and not the rents, issues or profits of defendant's nor of plaintiff's separate estate. That the value of plaintiff's interest in said community property so

acquired exceeds the sum of two hundred thousand dollars. That said defendant excludes plaintiff from her said interest in said community property and refuses her an accounting of the same, but is appropriating said interest of plaintiff to his own use and without her consent, and concealing said property from her and does thereby prevent her from obtaining a specific description of the same. That by reason of said concealment, plaintiff is unable to furnish said description at this time. That all said acts of said defendant on the basis of said final decree of divorce are to the irreparable damage and injury of plaintiff. That plaintiff has no adequate remedy at law to set aside and have adjudged void said final decree of divorce as being in violation of her said constitutional right to due process of law, nor to prevent said defendant from asserting any rights against her on the basis of said decree, nor to have adjudged void said section 132 of the Civil Code of said State of California to the extent it is construed by said Supreme Court to sanction and sustain said ex parte decree of divorce, and therefore in violation of the said constitutional right of plaintiff.

II

WHEREFORE, plaintiff prays it be adjudged that the said ex parte final decree of divorce and the said Section 132 of the Civil Code of the State of California, to the extent it sustains the same, are in violation of the "due process of law" clause in the Fourteenth Amendment of the Constitution of the United States and therefore void; that said final decree of divorce be accordingly set aside and annulled and the said defendant perpetually enjoined and restrained by writ of injunction from asserting, claiming and setting up any right or title adverse to plaintiff

under or by virtue of said final decree of divorce and particularly from asserting and claiming that said marital status and martial relations have been dissolved by said decree and from asserting and claiming any right, title or interest in said community property adverse to the said interest of plaintiff therein. That her interest in said community property as the wife of defendant be adjudged and established. That plaintiff be granted such other, further and different relief as may be just and equitable and for costs of suit.

George Clark

Pacific Mutual Building, Los Angeles.

Harry I. Stafford

Solicitors for Plaintiff.

Flood Building, San Francisco.

STATE OF CALIFORNIA

)

(SS.

CITY AND COUNTY OF SAN FRANCISCO)

GWYNETH HELBUSH being first duly sworn, deposes and says:

That she is the plaintiff in the above entitled action; that she has read the foregoing Bill of Complaint in Equity and knows the contents thereof; that the same is true of her own knowledge except as to the matters which are therein stated on her information or belief and as to those matters, that she believes it to be true.

Gwyneth Helbush

Subscribed and sworn to before me, this 11th day of September, 1930.

[Seal] Edward P. McAuliffe

Notary Public in and for the City and County
of San Francisco, State of California.

[Endorsed]: S-40-C Original. In the Central Division of the United States District Court, in and for the Southern District of California. Gwyneth Helbush, plaintiff, vs. Herman H. Helbush, defendant. Bill of Complaint in Equity to Set aside void judgment and for Injunction. Filed Sep 25 1930 R. S. Zimmerman, Clerk. By Edmund L. Smith Deputy Clerk George Clark and Harry I Stafford Attorneys for Plaintiff 1101-2-3 Pacific Mutual Bldg. Los Angeles, Calif. Mutual 6327

IN THE CENTRAL DIVISION OF THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GWYNETH HELBUSH,	:	
	:	
Plaintiff	:	
	:	
- vs. -	:	In Equity
	:	No. S-40-C
HERMAN H. HELBUSH,	:	
	:	
Defendant.	:	
-----	:	

MOTION TO DISMISS

NOW COMES the defendant in the above entitled action, Herman H. Helbush, and files this as his motion to dismiss the above entitled action, and moves the above entitled Court to dismiss the bill of complaint in equity on file in said action upon each and every of the following grounds, to wit:

(1) That said bill of complaint does not state facts sufficient to constitute a valid or any cause of action in equity or otherwise against this defendant.

(2) That said bill of complaint does not state facts sufficient to entitle the plaintiff to any relief as against this defendant.

(3) That the allegations and averments of said bill of complaint raise no Federal question and do not state facts sufficient to confer upon this Court jurisdiction either as to the parties or subject matter of said action.

(4) That it appears upon the face of said bill of complaint that no question arises from the averments thereof under the constitution of the United States, and no constitutional question is involved in the matters and things averred in said complaint.

(5) That it appears upon the face of said complaint that all of the matters and things alleged therein have been fully litigated between the parties to a final determination in the Courts of the State of California which had and has jurisdiction of the parties and of the subject matter of the said bill of complaint.

(6) That it affirmatively appears upon the face of said complaint that the controversy between the parties sought to be set forth therein does not arise under the constitution of the United States, and it likewise affirmatively appears that there has been no violation of Section 1 of the 14th amendment of the constitution of the United States in respect to the provision thereof for due process of law.

WHEREFORE the said defendant prays that said action and said bill of complaint be dismissed, and that he have and recover judgment for the costs incurred herein.

DATED: This 14th day of October, 1930.

Sullivan Roche Johnson & Barry.
ATTORNEYS FOR DEFENDANT.

[Endorsed]: Orig No. S-40-C In the Central Division of the United States District Court in and for the Southern District of California Gwyneth Helbush, Plaintiff, vs. Herman H. Helbush, Defendant. Motion to Dismiss Received copy of Motion to Dismiss this 16th day of October 1930—George Clark Atty for Ptlf Filed Oct 16 1930 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk. Sullivan, Roche, Johnson & Barry, Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

GWYNETH HELBUSH,)	
)	
Plaintiff,)	
)	
V.)	In Equity
)	No S-40-C
)	Decision.
HERMAN H. HELBUSH,)	
)	
Defendant.)	

Plaintiff brings this bill in equity, in which she charges that on June 27, 1924, she obtained an interlocutory decree of divorce against defendant, then her husband, in the Superior Court of the State of California, in and for the City and County of San Francisco. That in August, 1924, she condoned the offense of the defendant on which the divorce had been obtained and the parties again began

living together. That this continued until January 3, 1929, when defendant deserted her. That on April 10th, 1929, defendant sought and obtained the entry in the trial court a final decree of divorce without any notice to her of any kind and without her consent. That she moved in the trial court to set aside the final decree on the ground that no notice had been given her of defendant's intention to have the same entered. That the offense of defendant, on which the interlocutory decree was based, had been condoned and the court was without jurisdiction to enter the decree. That the trial court on May 7, 1929, after a hearing, denied her motion and she then prosecuted an appeal to the Supreme Court of California from the ruling of the trial court, and the Supreme Court on July 15, 1930, affirmed the ruling of the trial court. (Helbush vs. Helbush, 290 P. 18.)

She further charges that defendant is possessed of a large amount of property in which she is entitled to a community interest, and asks that this court intervene in her behalf on the ground that through the action thus taken against her she has suffered a deprivation of property rights without due process of law in violation of the right guaranteed her by the fourteenth amendment of the United States Constitution. Diversity of citizenship is not alleged.

Plaintiff prays that the final decree and Section 132 of the Civil Code to the extent it ^{Sustains} ~~assists~~ the same be adjudged in violation of the due process of law clause of the United States Constitution and the decree be set aside.

Plaintiff files her bill not on the theory that she has not had her day in court but because the Court improperly denied her relief. I am not aware of any precedent for

such a proceeding. A final judgment has been entered in the State Court. There is no exception to the rule, except in a class of cases in which this is not included, that where a court, having jurisdiction of the parties and the subject matter, enters a final judgment, it settles once and for all the questions raised or that might have been raised in the action. A final judgment has been entered in this case in the State Court which it is beyond the power of any other court to disturb.

Without passing upon the question whether the plaintiff having prosecuted her action for relief to a final judgment in the State Court, has not been accorded due process of law, it is plain that this court has no jurisdiction of such an action. If plaintiff was denied the due process of law guaranteed by the United States Constitution by the entry of a final decree of divorce without notice to her under the provisions of Section 124 of the California Civil Code, then, such question having been presented to the California Supreme Court, relief can only be afforded her by the United States Supreme Court. (U. S. Judicial Code 237, *Rooker vs. Fidelity Trust Co.* 263 U. S. 413.)

The plaintiff's bill must therefore be dismissed without leave to file an amended bill.

It is so ordered.

Geo. Cosgrave
U. S. District Judge

[Endorsed]: No S 40-C In the District Court of the United States for the Southern District of California Gwyneth Helbush Plaintiff vs Herman H. Helbush Defendant Decision Filed Jan 27 1931 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk.

IN THE CENTRAL DIVISION OF THE UNITED
STATES DISTRICT COURT IN AND FOR
THE SOUTHERN DISTRICT OF
CALIFORNIA

* * * *

GWYNETH HELBUSH,

Plaintiff,

vs.

In Equity

No. S-40-C.

HERMAN H. HELBUSH,

Defendant.

DECREE DISMISS-
ING BILL.

* * * *

The motion of the defendant, Herman H. Helbush, to dismiss the bill of complaint filed in the above entitled proceeding came on regularly for hearing before the above entitled court, which motion was argued by counsel for the respective parties, and the motion having been submitted to the court for its consideration, and decision, and the court having fully considered the same and having given and made its decision herein granting said motion;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of said defendant to dismiss the bill of complaint herein be, and the same is hereby granted without leave to said plaintiff to amend said bill of complaint.

DONE IN OPEN COURT this 24th day of February, 1931.

Geo. Cosgrave.
United States District Judge.

APPROVED AS TO FORM: as provided in Rule 44.

George Clark

Harry I. Stafford

Attorneys for Plaintiff.

Decree entered and recorded 2/24/31 R. S. Zimmerman Clerk. By Francis E. Cross Deputy Clerk.

[Endorsed]: In Equity S-40-C In the Central Division of the United States District Court in and for the Southern District of California Gwyneth Helbush, Plaintiff vs Herman H. Helbush, Defendant. Decree Dismissing Bill. Filed Feb 24 1931 R. S. Zimmerman, Clerk By Frances E. Cross Deputy Clerk Law Offices Frank P. Doherty Suite 519 Title Insurance Building 433 So. Spring Street Los Angeles, California.

IN THE CENTRAL DIVISION OF THE UNITED STATES DISTRICT COURT, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GWYNETH HELBUSH,

Plaintiff,

vs.

In Equity

HERMAN H. HELBUSH,

No. S-40-C

Defendant.

PETITION FOR APPEAL
TO THE HONORABLE, GEORGE COSGRAVE,
JUDGE OF THE UNITED STATES DISTRICT
COURT:

The above named plaintiff, GWYNETH HELBUSH, feeling aggrieved by the decision and order of the Court

made and entered on the 24th day of February, 1931, dismissing plaintiff's bill of complaint heretofore filed herein and without leave to said plaintiff to amend said bill of complaint, does hereby appeal from said order and judgment to the United States Circuit Court of Appeals, for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, for the reasons set forth in the assignment of errors filed herewith and she prays that her plea be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, under the rules of said Court in such case made and provided and your petitioner further prays that all further proceedings be suspended, stayed and superseded until the determination of said appeal by said United States Circuit Court of Appeals and that the proper order relating to and fixing the amount of security to be required of her be made.

Dated: March 20th, 1931.

Harry I. Stafford

George Clark

Attorneys for Plaintiff.

[Endorsed]: In Equity No. S-40-C In the Central Division of the United States District Court, In and for the Southern District of California Gwyneth Helbush Plaintiff, vs Herman H. Helbush, Defendant. Petition for Appeal Filed Mar 24 1931 R. S. Zimmerman, Clerk By M. L. Gaines Deputy Clerk George Clark, Harry I Stafford Attorney at Law Flood Building San Francisco.

IN THE CENTRAL DIVISION OF THE UNITED
STATES DISTRICT COURT, IN AND FOR
THE SOUTHERN DISTRICT OF
CALIFORNIA.

GWYNETH HELBUSH,

Plaintiff,

vs.

In Equity

HERMAN H. HELBUSH,

No. S-40-C

Defendant.

ASSIGNMENT OF ERRORS

Now comes GWYNETH HELBUSH, the plaintiff in the above entitled action, and contends that, in the record, opinion, decision and final judgment in said cause, there is manifest and material error, and in connection with, and as a part of her appeal herein, makes and files the following assignment of errors upon which she will rely in the prosecution of her appeal in said cause:

—1—

That the United States District Court for the Southern District of California erred in deciding that plaintiff's complaint did not state facts sufficient to constitute a cause of action against the defendant.

—2—

That said Court erred in deciding that plaintiff's complaint did not state facts sufficient to entitle plaintiff to any relief against defendant.

—3—

That said Court erred in deciding that plaintiff's complaint did not raise any Federal questions.

—4—

That said Court erred in deciding that plaintiff's complaint did not state facts sufficient to confer upon said Court jurisdiction either as to the parties or the subject matter of said action.

—5—

That said Court erred in deciding that upon the facts as alleged in plaintiff's complaint no question arises under the Constitution of the United States and that no constitutional question is involved in the facts so alleged.

—6—

That said Court erred in deciding that under the facts, as alleged in plaintiff's complaint, there has been no violation of Section One of the Fourteenth Amendment to the Constitution of the United States in respect to the provision therein for due process of law.

—7—

That said Court erred in deciding that under the facts, as alleged in plaintiff's complaint, all matters so alleged had been fully litigated between plaintiff and defendant to a final determination in the Courts of the State of California, which had and have jurisdiction of the parties and of the subject matter of plaintiff's complaint.

—8—

That said Court erred in granting defendant's motion to dismiss without leave to plaintiff to amend her complaint.

—9—

That said Court erred in refusing to deny defendant's motion to dismiss.

WHEREFORE, plaintiff prays that said order and judgment be reversed and that an order be entered reversing the order and judgment of the District Court in

said cause and that said Court be directed to render and enter judgment denying defendant's motion to dismiss.

Dated: San Francisco, March 20th 1931.

Harry I. Stafford

George Clark

Attorneys for Plaintiff.

[Endorsed]: In Equity No. S-40-C In the Central Division of the United States District Court, In and for the Southern District of California. Gwyneth Helbush, Plaintiff, vs Herman H. Helbush, Defendant. Assignment of Errors. Filed Mar 24 1931 R. S. Zimmerman, Clerk By M. L. Gaines Deputy Clerk George Clark, Harry I. Stafford Attorney at Law Flood Building San Francisco

IN THE CENTRAL DIVISION OF THE UNITED STATES DISTRICT COURT, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GWYNETH HELBUSH,

Plaintiff,

vs.

In Equity

HERMAN H. HELBUSH,

No. S-40-C

Defendant.

ORDER ALLOWING APPEAL

Upon motion of Harry I. Stafford and George Clark, attorneys for the petitioner and plaintiff, Gwyneth Helbush, and upon filing the petition of said plaintiff for appeal, IT IS ORDERED that an appeal be, and it is hereby allowed to have reviewed in the United States Circuit Court of Appeals, for the Ninth Circuit, the order

and judgment entered herein on the 24th day of February, 1931, in favor of defendant and against plaintiff and that the amount of the bond, as required by law, on said appeal be, and the same is hereby fixed in the sum of Two hundred fifty (250) Dollars and said bond shall act as a supersedeas and cost bond pending the outcome of said appeal.

Dated: March 24th, 1931.

Geo Cosgrave
JUDGE.

[Endorsed]: In Equity No. S-40-C In the Central Division of the United States District Court, in and for the Southern District of California. Gwyneth Helbush, Plaintiff, vs Herman H. Helbush, Defendant. Order allowing appeal Filed Mar 24 1931 R. S. Zimmerman, Clerk By M. L. Gaines, Deputy Clerk. George Clark, Harry I Stafford Attorney at Law Flood Building San Francisco

IN THE CENTRAL DIVISION OF THE UNITED STATES DISTRICT COURT, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GWYNETH HELBUSH,

Plaintiff,

vs.

In Equity

HERMAN H. HELBUSH,

No. S-40-C

Defendant.

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, GWYNETH HELBUSH, as Principal, and EDWARD A. CUNHA and DEAN CUNHA, as Sure-

ties, are held and firmly bound unto HERMAN A. HELBUSH, in the sum of Two hundred and fifty Dollars (\$250.00) to be paid to the said HERMAN H. HELBUSH, his executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents

SEALED with our seal and dated this 26th day of MARCH, 1931.

WHEREAS, lately at a District Court of the United States for the Southern Division of the Southern District of California, in a suit pending in said court between Gwyneth Helbush, plaintiff and Herman H. Helbush, defendant, a judgment and decree was rendered against the said plaintiff on the 24th day of February, 1931, dismissing plaintiff's bill of complaint theretofore filed therein; and

WHEREAS, the said plaintiff, Gwyneth Helbush, having obtained from said court an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the aforesaid suit, and a citation directed to the said HERMAN H. HELBUSH citing and admonishing him to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California, according to law within thirty days from the date of said citation;

NOW, THEREFORE, the condition of this obligation is such that if the said plaintiff, Gwyneth Helbush shall prosecute her said appeal to effect and reverse the said judgment against her or shall pay, or cause to be paid all damages and costs if she fail to make her plea good,

then the above obligation shall be void; otherwise, to remain in full force and effect.

And further the undersigned Sureties agree that in case of a breach of any condition hereof, the above entitled court may, upon notice to the said Sureties of not less than ten days, proceed summarily in the above entitled cause to ascertain the amount which said Sureties are bound to pay on account of such breach and render judgment therefor against them, and each of them, and award execution thereof, not exceeding, however, the sums specified in this undertaking.

Edward A. Cunha
Dean Cunha
Gwyneth Helbush

STATE OF CALIFORNIA)
) (SS.
CITY AND COUNTY OF SAN FRANCISCO)

EDWARD A. CUNHA and DEAN CUNHA, the Sureties named in and who executed the above bond, being duly sworn, each for himself, says:

That he is a resident and householder within the said State of California and is worth the sum specified in the said bond for which he is bound, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Edward A. Cunha,
Dean Cunha

Subscribed and sworn to before me, this 31st day of March, 1931.

[Seal]

Edward P. McAuliffe

Notary Public in and for the City and County of San Francisco, State of California.

The within and foregoing bond on appeal is hereby approved, both as to sufficiency and form.

Dated: March 31, 1931.

Sullivan, Roche, Johnson & Barry
Attorneys for Herman H. Helbush.

The within and foregoing bond on appeal is hereby approved, both as to sufficiency and form.

Dated: Apr. 1 1931.

Geo Cosgrave
United States District Judge.

[Endorsed]: In Equity No. S-40-C. In the Central Division of the United States District Court, in and for the Southern District of California. Gwyneth Helbush, plaintiff, vs. Herman H. Helbush, defendant. Bond on Appeal. Filed Apr. 1, 1931. R. S. Zimmerman, Clerk, by Murray E. Wire, Deputy Clerk. George Clark, Harry I. Stafford, Attorney at law. Flood Building, San Francisco.

IN THE CENTRAL DIVISION OF THE UNITED
STATES DISTRICT COURT, IN AND FOR
THE SOUTHERN DISTRICT OF
CALIFORNIA

GWYNETH HELBUSH,

Plaintiff,

vs.

In Equity

HERMAN H. HELBUSH,

No. S-40-C

Defendant.

AMENDED PRAECIPE FOR TRANSCRIPT OF
RECORD.

To the Clerk of the above entitled Court :

Please prepare a record on appeal in the above entitled cause and include therein the following :

Bill of complaint, filed

Motion to dismiss, filed

Decision of Court on Motion to Dismiss,

Decree dismissing bill, filed February 24th, 1931.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Citation on appeal.

Bond on appeal.

This praecipe.

Dated: April 6th 1931.

George Clark

Harry I. Stafford

Attorneys for Plaintiff.

[Endorsed]: In equity No. S-40-C In the Central Division of the United States District Court, in and for the Southern District of California. Gwyneth Helbush, Plaintiff, vs Herman H. Helbush, Defendant. Amended Praecipe For Transcript of Record. Receipt of a copy of the within Amended Praecipe for Transcript of Record is hereby admitted this 6th day of April, 1931. Sullivan Roche Johnson & Barry, Attorneys for the Defendant. Filed Apr 8—1931 R. S. Zimmerman, Clerk George Clark, Harry I Stafford Attorney at Law Flood Building San Francisco

IN THE CENTRAL DIVISION OF THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GWYNETH HELBUSH,	:	
	:	
Plaintiff	:	
	:	
- vs. -	:	CLERK'S
	:	CERTIFICATE.
HERMAN H. HELBUSH,	:	
	:	
Defendant.	:	

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 28 pages, numbered from 1 to 28 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; bill of complaint; motion to dismiss bill; decision; decree dismissing bill; petition for appeal; assignment of errors; order allowing appeal; bond on appeal and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certi-

fying the foregoing Record on Appeal amount to.....
and that said amount has been paid me by the appellant
herein.

IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the Seal of the District Court of the
United States of America, in and for the Southern
District of California, Central Division, this.....
day of April in the year of Our Lord One Thousand
Nine Hundred and Thirty-one, and of our Independ-
ence the One Hundred and Fifty-fifth.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in and
for the Southern District of Cali-
fornia.

By

Deputy.